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# **Corporate Respect for Human Rights: meaning, scope, and the shifting *order of discourse***

by Kenneth J McPhail and Carol A Adams

## **Purpose**

This article critically analyses the human rights discourse of thirty Fortune 500 companies in the mining, pharmaceutical and chemical industries at two key points in the recent evolution of the UN's business and human rights agenda.

## **Methodology**

We draw on Fairclough (1992) and Mashaw (2007) in a critical discourse analysis of corporate human rights disclosures of ten companies in each of the chemical, mining and pharmaceutical industries at two points in time coinciding with: firstly, the publication in 2008 of the *Protect, Respect, Remedy* policy framework; and secondly, the endorsement by the UN in 2011, of a set of *Guiding Principles* designed to implement this framework.

## **Findings**

Corporate constructions of human rights are broad: from labour rights, through social and political rights, to the right to health and a clean environment. The corporate discourse is one of promoting, realizing and upholding rights that construct the corporation as an autonomous source of power beyond the state.

## **Practical implications**

Whilst we find evidence of emergent human rights due diligence procedures, we find little engagement with the most potent element of the Guiding Principles: access to remedy for those whose rights have been violated.

## **Originality/value**

We develop a way of conceptualising business human rights responsibilities and contend that the corporate human rights discourse of respect reflects a significant reconfiguration of political power.

**Key words:** Discourse analysis, Guiding Principles on Business and Human Rights, Human rights, Ruggie, United Nations

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## Introduction

“Respect for human rights is the basis for all fair and civilized social interaction.”

*Bayer Sustainable Development Report, 2007, Science For a Better Life, page 70.*

Drawing on Fairclough (1989, 2005) this paper explores how respect for human rights is emerging and being operationalised in the discourse of thirty Fortune 500 companies in the mining, pharmaceutical and chemical industries at two key points in the recent evolution of the UN’s business and human rights discourse - specifically, the publication of *The Protect Respect Remedy framework* in 2005 and the endorsement of the *Guiding Principles on Business and Human Rights* in 2011.

In 2005, the UN mandated Prof John Ruggie of Harvard University to address the impasse that had resulted from the publication of *The United Nations Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*<sup>i</sup>. The Protect, Respect Remedy framework that Ruggie subsequently developed was based on three principles: firstly, nation states as primary duty bearers under international human rights law have a clear duty to protect against human rights violations by corporations; secondly, independent of the states’ obligations, corporations have a responsibility to respect human rights based on internationally agreed norms on human rights (Backer, 2011); and finally, the requirement for access by victims of human rights violations to both judicial (through the state) and non-judicial (through for example corporations and industry initiatives) remedies. Subsequently the UN directed Prof Ruggie to develop a series of guidelines for implementing the Respect, Protect, Remedy framework. The United Nations subsequently endorsed Ruggie’s, *Guiding Principles on Business and Human Rights* (GPs from here on) in July 2011. These guidelines are intended to promote new accounting and accountability practices within corporations, principally in relation to human rights due diligence practices and corporate based non-judicial access to remedies for those whose rights have been violated.

The provisions the GP’s contain are "significant, if not revolutionary" (Muchlinski 2012) and they have major implications both for the way we think about corporate accountability and the

way corporate social responsibility is practised (see, for example, Gallhofer et al. 2011; Cooper et al's 2011; Sikka 2011; Islam & McPhail 2011; Gray & Gray, 2011; Paisey & Paisey, 2012; Dillard, 2013). They represent a radical shift both in human rights doctrine and global governance (Backer, 2011; Ratner, 2001; Muchlinski, 2001; 2012). The GP's radically challenge established views of the relationship between government, business and society (Dahl, 1998; Archibugi, 2003; della Porta, 2013; Held, 2005). They address the vagueness in the *scope* of rights for which corporations are accountable and, more specifically, the *degree* of responsibility a company assumes for enacting these rights (Nolan, 2010; Taylor, 2011; Ruggie, 2011).

The GP's attempt to address the degree and scope of corporate responsibility for human rights has resulted in a growing body of literature that examines the normative basis on which such a responsibility might rest. This literature has tended to focus on the normative analysis of the extent to which corporations can be morally, legally, or politically responsible for respecting human rights (see for example Arnold 2010, Wettstein, 2010, 2015). It is this normative analysis that has informed the debate on what corporate responsibility to respect rights means and how it should be put into practice - for example, whether respect implies a negative duty to do no harm or a positive duty to realize rights. It has also informed the debate around the scope of rights encompassed by this responsibility. For example, does this duty relate to social and economic rights only, or does it also extend civil and cultural rights<sup>iii</sup>? While this work is important there is, we argue, a corresponding need to explore how the meaning of responsibility to respect is being discursively formed and being translated into organizational activity in practice. Our contention is that while these normative debates are important, they need to be counterbalanced by an understanding of how power, in all its overt, institutional as well as discursive forms, shapes the meaning and enactment of corporate responsibility for rights. Drawing on Fairclough (1989) we conceptualise the GP's as a text that creates a set of possibilities for talking about corporate responsibility. Drawing on this critical discourse approach, we begin to explore the different grammars and scopes of respect that are emerging in corporate discourse on human rights and the corresponding ways in which respect is being operationalised. We believe that the answers to these questions are important, not only because the meaning and scope of corporate respect for rights affects the lived experience of some of the most vulnerable in society, but also because it affects the relationship between the state, business and society (Muchlinski, 2012).

This paper therefore contributes to the literature in two ways. Firstly, drawing on Fairclough (1992; 2005; see also Gallhofer, Haslam & Roper, 2001; Ferguson, 2007 and Gallhofer, Haslam

& Roper, 2007 for a critique), we re-conceptualise the GPs as a meso-level translation mechanism that connects the grand narrative of human rights to the social practice of corporate accountability. By doing so we recognise the potential within the GP's to make possible new discussions about corporate accountability. However, while these new discussions have the potential to shift the *order of discourse* (Fairclough, 2005), the actual range of variation is socially delimited and structured through the ways in which linguistic and semiotic systems interact with other social structures (Fairclough, 2005 p.924). These issues are addressed in section one of the paper.

Secondly, based on the above we draw on the emergent human rights discourse of thirty Fortune Global 500 companies in the mining, pharmaceutical and chemical industries to provide a critical discourse analysis (CDA hereafter) of the *emergence* and *operationalization* of business and human rights discourse in practice (Fairclough, 1992; 2005; Chouliaraki and Fairclough, 2010)<sup>iii</sup>. We use Fairclough's (2005, p.932) definition of emergence as "the processes of emergence of new discourses, their constitution as new articulations of elements of existing discourses." We assume that the scope and meaning of respect for rights is, in Fairclough's (2005) terms emerging. We define operationalization as, "the operationalization of such discourses, their enactment in new ways of (inter)acting, including genres, their inculcation in new ways of being or identities, including styles, their materialization as objects and properties of the physical world." Fairclough's (2005, p.932). We do this in section three.

The article is structured follows. The first substantive section elaborates on our first contribution and outlines how we view the GPs within the article. This section develops our theoretical understanding of the GP's as a text and how we connect this text to the language in the corporate accounts that we analyse. The second section outlines the methods adopted and the third presents an analysis of the emergence and operationalization of corporate responsibility for rights. The article concludes with a discussion of the implications of the study.

## **1. The Guiding Principles - Discourse & Giving Accounts**

This section addresses our first contribution. It outlines a different kind of way of conceptualising what the GP's are and how they function. In doing so this section provides the theoretical basis for our subsequent analysis of corporate text. In this paper we start from the assumption that there is some connection between the GP's on the one hand and the actual words

used in corporate disclosures on the other. However, this contention raises questions about how we view the GP's; what the words in the corporate disclosures mean; and how the two are connected (Alvesson & Karreman, 2000, 2011). This section therefore addresses the theoretical assumptions that underpin the connection between the two and out analysis in section three.

### *Conceptualising the GP's*

We firstly clarify how we conceptualize the GPs and their relationship with the discourse of human rights more broadly (Alvesson & Karreman, 2000, 2011; See also Fairclough, 2005).

INSERT FIGURE 1 HERE

Following Alvesson & Karreman, (2000; 2011; see also Mumby, 2011; Iedema, 2011 and Bargiela-Chiappini, 2011)<sup>iv</sup>, we identify three levels of discourse (see figure 1): the micro level of organisational talk; the macro level of broad historically situated grand narratives that shape what can and cannot be said and the meso level translation mechanisms that connect the two (see Cooper, Coulson & Taylor, 2011).

Following Gaete (1993), we view the discourse of human rights as a macro level grand narrative.

Human rights are one of the monumental legacies left by the Enlightenment. They are one of those grand narratives (*grand recite* as Lyotard called them) that spoke the Truth about the world in order to change it and that promised a final reconciliation at the end of modernity. (Gaete, 1993: VIII)

At this macro level, the discourse of human rights operates as an organizing system of power-knowledge that shapes what can be said about rights within a particular period (Fairclough, 2005). We therefor see rights as being associated with a measure of “durable meaning,” in Alvesson and Kareeman’s (2000) sense of speaking beyond specific linguistic interactions<sup>v</sup>. We associate this durability with broader institutions like the United Nations and the International Bill of Rights that support the language of rights and lend it a measure of materiality. In Fairclough’s (2005) sense this discourse is already operationalised in ways of interacting and identities, primarily between the individual and the state (2005).

The macro-semantic discourse of human rights therefore orders. The discourse of *business* and human rights, and the GPs in particular, operate within this macro context in a number of interesting and important ways. The GP’s represent a challenge to the order of macro human

rights discourse by decentring the state. They also challenge the established discourse on the function of the corporation. The GPs sit between these two ordered discourses as a meso-level translation mechanism designed to provide a discursive practice that couples these two worlds. We view this meso-level discourse as in the process of being ordered (Gallhofer, Haslam & Roper, 2001) and institutionalised (the Editors 2010; Cooper et al, 2011). Business and human rights is currently at a formative moment and this ordering represents both a site and a stake in the political struggle for business and human rights (Gallhofer, Haslam & Roper, 2001).

### *Conceptualising Corporate Discourse*

Secondly, we clarify our understanding of how the use of human rights language by corporations relates to cognition and practice<sup>vi,vii</sup>. How are we to approach the question of what corporate statements about human rights *mean*? The contention that corporate disclosure is intentionally designed (Larrinaga-Gonzalez et al. 2001; Husillos, Larrinaga-Gonzalez & Spence, 2009) or structurally determined seems to overlook the more nuanced power and opportunity in the emergence of a discourse. Instead we are interested in the interplay between the meaning structures the GPs seek to impose on corporate accountability for human rights and the meaning structures associated with the genre of rendering an account. In other words, what does it mean for a corporation to say that it respects, supports or promotes rights. Our decision to view cognition in this way is politically motivated and, we contend, consistent with the CDA ethos (Fairclough, 1992). The scope of respect relates to the representation of others within corporate discourse on human rights.

We associate cognition with the broad social context represented in the GPs and in particular with the logic that the Ruggie framework tries to impose on our understanding of business responsibility for human rights (Fairclough, 1992). The GPs represent an attempt to provide the bases for making intelligible statements about business and human rights (Chouliaraki & Fairclough, 2010). Ruggie presents the Protect Respect Remedy framework as an authoritative and coherent focal point “around which the expectations and actions of relevant stakeholders could converge,” viewing the framework as an attempt to generate a “shared knowledge,” on business and human rights. In contrast to the Global Compact, the GPs are not presented as a set of voluntary principles that companies can choose to endorse or not. They represent a normative statement of responsibilities based on internationally agreed norms and legislation on human rights. However, as we noted above, the GPs do attempt to disrupt existing meaning structures

and are associated with a measure of ambiguity. We therefore explore the meaning of corporate discourse on human rights against the logic of the GPs.

However, there is also the issue of the form taken by the text that we explore, or its genre (Fairclough, 2003). We view the genre as an account. We connect Fairclough's (1992) notion of genre of discourse to work by Schwieker (2003) and Arrington & Francis (2003) on the nature of economic accounts. We do this in order to locate the meaning of the text within the logic of the genre, specifically Arrington & Francis's (2003) logic of rendering an account. For Arrington & Francis (2003) it is the giving of the account that establishes the logic of the act (an advert for example would might have a different logic). We draw on Schwieker (2003) to contend that the giving of an account is a discursive act in which the identities of agents are displayed as inter-subjective and constituted over time. We contend that this is consistent with Fairclough's concern with how discourse is constitutive of identities.

We therefore locate the meaning of the human rights disclosures we study in the relationship between the logic of the GPs and the logic of rendering an account. We do this in order to explore how the micro discourse of corporate disclosure on human rights, impacts both the identity of corporations and the kinds of democratic claims that this linguistic shift, at least potentially, opens up<sup>viii</sup> (Arrington & Francis, 1993; Schwieker, 2003). Our position on cognition therefore represents our political participation in the struggle for the meaning of business and human rights as it is *being* ordered (Fairclough, 2003; Gallhofer, Haslam & Roper, 2001)<sup>ix</sup>.

We therefore propose an *analytical dualism* (Fairclough, 2005) that seeks to hold the macro-semantic discourse of human rights and the micro context of specific corporate text in dialectical tension<sup>x</sup>.

## 2. Method

We construe human rights as discursively constituted (Phillips & Hardy, 2002) and we explore how the meaning of human rights and the relationship between corporations, states and citizens is being discursively constructed and framed within the narrative sphere of corporate external accountability reports (see for example Hajer, 1995; Macnaghten & Urry, 1998)<sup>xi</sup>. We view the instances of rights talk we gather as discursive events within which ideological struggles are embedded<sup>xii</sup>.



We undertake a CDA of the human rights disclosures of thirty Fortune Global 500 companies in the mining, pharmaceutical and chemical industries<sup>xiii</sup>. Our choice of sample was influenced by three factors. Firstly, prior surveys indicated that a significant proportion of Fortune Global 500 companies had human rights policies in place and we therefore assumed that there would be a greater likelihood of finding examples of human rights talk. Secondly, we selected the top 10 companies in the chemical, mining and pharmaceutical<sup>xiv</sup> sectors, as they have attracted considerable criticism in relation to human rights challenges (see for example Allens Arthur Robinson, 2007; Joseph, 2003). Finally, the bulk of the emerging discourse on business and human rights has focused specifically on the human rights violations and responsibilities of large multinational corporations (Ratner, 2001). Collectively, the sample represents some of the most powerful corporations in the world and we were interested to explore how these corporations narrated their human rights responsibilities. Collectively, we view their disclosures as a corpus of text that provides an insight into a key, political community with which the GPs attempt to engage. A list of the companies is provided in table 1 below. The companies were incorporated across a range of 12 different countries. Pemex is the only company in the sample that is State owned.

INSERT TABLE 2 HERE

We analyze the annual reports, social responsibility reports and websites of the corporations in our sample for the year 2007/08 then again in 2011/12 (Abeysekera & Guthrie, 2005; Beattie et al. 2004; Freedman & Stagliano, 2002; Buhr & Freedman, 2001; Freedman & Jaggi, 2005; Laine, 2005; Livesey, 2002; Livesey & Kearins, 2002; Tregidga & Milne, 2006). We view these sources as significant elements in corporate communicative accountability (Held & Koenig-Archibugi, 2005). The rationale for the data collection period is based on key moments in the United Nations' attempts to shift the discourse on business and human rights.

Our two data collection points reflect key moments in Professor Ruggie's term as UN special representative on business and human rights. Ruggie's term was split into three phases. An initial data gathering phase from 2005-2007 was followed by a second framework development phase from 2007-2008. In responding to the framework, the UN extended Ruggie's mandate for a further three years (2008-2011) in order to implement the framework. Our data gathering coincides with the two key events in the UN's project: firstly, the development of the Protect,

Respect, Remedy policy framework in 2008 and secondly, the ratification of the Guiding Principles in June 2011.

The United Nations Environment Programme (UNEP) has been instrumental in promoting the GRI (Global Reporting Initiative) reporting guidelines which are the primary way human rights have been discussed within the context of corporate disclosure to date (Etzion & Ferraro, 2010). Many of the companies in our sample were signatories to the Global Compact. BASF for example is a founding member. Dow, Bayer, AkzoNobel, and Vale, explicitly disclosed their status as signatories, while two-thirds of the corporations explicitly referenced the GRI as being influential in framing their CSR disclosure practices<sup>xv, xvi</sup>.

Our content analysis protocol collected all references to the GRI and the associated human rights disclosure requirements in their G3 guidelines. We report on the impact of the publication of the framework and the Guiding principles in a separate article however, we summarise the results here as context for the focus of this particular article. Firstly, over the two periods there was a significant increase in the number of companies reporting on human rights requirements outlined in GRI, G3. Half of the companies in our sample reported on more of the G3 human rights indicators in 2011 than they did in 2008. Secondly, while there appeared to be no noticeable increase in human rights reporting amongst European companies as a group, there did seem to be a significant increase amongst both American and Asian companies. Finally, there appeared to be only a marginal increase in human rights reporting across sectors. While we cannot draw any substantive conclusions, the results are indicative of the growing general relevance of human rights norms. The increase in corporate discourse on human rights, particularly in the USA may also be related to Ruggie's work on the GPs.

This article focuses on the second part of our protocol which collected all disclosures related to the Protect, Respect, Remedy framework and the operational principles outlined in the GPs, specifically human rights due diligence and access to remedy. The data was collected by an experienced research assistant. The research assistant pilot tested the content analysis protocol and the corresponding data and classifications were independently checked by both co-authors. The starting point for our analysis is Fairclough's (2003) model of the meaning making process: the production of the text, the text itself and the reception of the text. We analyse the text itself, focusing specifically on how the internal relations of the text, as expressed through the operation of semiotics, grammar, semantic relationships and categorisation both reflects and shapes

changing external social, political relationships (Fairclough 2003). Our analysis was informed by Mashaw's (2007) 'grammar of accountability'<sup>xvii</sup>.

The following section analyses the public human rights narrative of our sample companies (Hajer, 1995; Macnaghten & Urry, 1998). We explore how this emerging discourse articulates with elements of existing business discourses as the corporate responsibility for human rights begins to take on meaning. We explore what respect means; the scope of respect and how respect is beginning to be operationalized.

### **3. Analysis**

Our analysis is organized around the structure of the GPs. Firstly, we analyze the emergent relationship between business and the state as outlined in the Protect Respect Remedy framework to begin to understand what business respect for human rights means and the scope of rights to which this duty applies. Secondly, we explore the beginnings of the operationalization of the business and human rights discourse (Fairclough, 1992; 2005; Chouliaraki and Fairclough, 2010). We study the procedural recommendations that the GPs set out for corporations, specifically human rights due diligence and access to remedy. Drawing on Fairclough (2003) we explore how the internal relations of the text reflect changing external relations.

#### **3.1 The State's Duty to Protect Human Rights and Business Responsibility to Respect Human Rights**

The state/corporate human rights accountability framework within the GPs is based on three assertions that significantly challenge established ideas about corporate responsibility. First, states are seen to have an unequivocal responsibility to ensure that corporations do not violate human rights, whether these violations are perpetrated within its borders or beyond. Second, the states responsibilities for human rights are presumed to extend to all of its relationships with corporations, whether this involves the procurement of goods and services, public/private finance initiatives or support from state bodies like Export Credit Agencies for example. Finally, the GPs stipulate that corporations have a responsibility to respect human rights that is independent of, but which does not diminish, the state's obligations.

The first two assertions are based on a long established international legal framework with a clear

set of accountability relationships<sup>xviii</sup>. Within this framework the realization of rights is the responsibility of states, not corporations. States are seen to have a responsibility to regulate on socially important matters and corporations have a responsibility to abide by the law (Muchlinski 2001; 2012). Indeed, it is the ability of states to protect and realize rights that increasingly is seen to constitute their legitimacy as sovereign entities. Corporations on the other hand have historically been construed as beneficiaries of rights (such as the right of property, freedom of speech, fair trial and privacy) that can be protected from intrusion (Muchlinski 2001). The first two principles are significant for the levels of responsibility they place on the state to monitor and account for both their relationships with corporations and the foreign activities of companies domiciled within their borders.

The final assertion, however, decentres this established human rights discourse. The corporate responsibility to respect human rights radically shifts the discourse away from its traditional focus on the sovereign state to a *polycentric* focus on the state *and* the corporation (Backer 2011) and as such takes the discussion of corporate legitimacy into a completely new sphere (Held & Koenig-Archibugi 2005). This shift reflects the perceived inability of state based legal systems alone to realise rights (or deliver justice) within a globalized economic context (Backer 2011; Held & Koenig-Archibugi 2005; Held 2005) and is significant for two reasons. First, while rights have traditionally been constituted in terms of membership of a territorially defined community, the GPs elevate rights above the territorial sovereignty of the state. The idea of citizenship shifts from membership of a national community which bestows rights, to an alternative principle in which all persons have equal rights as part of a global citizenship (Held 2005). Second, this has implications for conceptualising the legitimacy of sovereign democratic political regimes, and the power they exercise (Porta 2013; MacDonald and MacDonald 2010; Backer 2011b; Held & Koenig-Archibugi 2005). Nagal (2005 :116) for example exemplifies the traditional way in which justice and sovereignty have been closely linked within contemporary political theory when he says, “The only way to provide that assurance [of rights] is through some form of law, with centralized authority to determine the rules and a centralized monopoly of the power of enforcement.”

The GPs place rights, as globally accepted “social norms” above state based legal systems as a basis for corporate behaviour<sup>xix</sup>. This premise challenges the established supremacy of states in determining the laws that shall apply to its citizens and their legitimacy to do so (Backer 2011)<sup>xx</sup>. The GPs therefore create a number of significant questions in relation to the state as the

traditional constitutional and procedural democratic mechanism for realizing the conditions of life associated with democratic political systems (della Porta 2013).

The GPs focus on international social norms is reflected in the corporate discourse in our sample. Bayer, comment,

Respect for human rights is the basis for all fair and civilized social interaction.  
*Science For a Better Life, Bayer Sustainable Development Report 2007, page 70.*

Bayer's discourse of *respect* reflects the language used in the GPs to capture corporate responsibilities. But what does this mean? Corporate responsibility to respect is still being ordered. Drawing on Fairclough (1992) we explore three questions. What does "respect for human rights" mean? What is the scope of human rights? that corporations have to respect. And, finally, how is respect being practiced? In addressing these questions Fairclough (1992) encourages us to reflect on how power operates through linguistic structures to influence what respect for rights can and cannot mean (Fairclough 1992; 2005; Chouliaraki and Fairclough 2010).

The decentring nature of the GPs' third claim is reflected in the ambiguity of language use within the corporate disclosures in our sample. Lexically<sup>xxi</sup>, the GPs use the noun *respect* exclusively in relation to corporate responsibility for human rights while the verb *protect* is used almost entirely in relation to the accountability of nation states. Syntactically<sup>xxii</sup>, this relationship between *rights* and *protection* partially reflects the historical focus on the responsibilities of the state. The obligation to respect reflects a concern that corporations should do no harm and that positive attempts to promote rights should not be offset against rights violations. Whatever the reason, however, the distinction is not sustained in the micro discourse of corporate accountability.

Within our sample, a number of terms emerge as synonymous with respect. Some companies use the language of *upholding*, *promoting* and *understanding* rights. BHP Billiton (BHP Billiton 2007 Full Sustainability Report, p. 247), for example, comment, "wherever we operate we will...ensure ... we *understand, promote and uphold* fundamental human rights within our sphere of influence, *respecting* the traditional rights of Indigenous peoples and valuing cultural heritage" [our emphasis], while Novartis likewise say,

As well as actively avoiding involvement in the abuse of human rights, we share the notion that companies – within a fair societal division of responsibilities – *also have a role to play in promoting human rights*, such as the right to an adequate standard of living." [our emphasis]

Other companies, however, employ the terminology of protection reserved for nation states within the GPs. DuPont, for example, say,

DuPont is committed to the *protection and advancement* of human rights wherever we operate.

*DuPont GRI Report 2011, Page 52.*

Merck (*Advancing the Dialogue, Toward a Healthier Future*, Corporate Responsibility 2008 Report, page 37) also comment, “Business has an important role to play *in protecting and promoting the advancement of fundamental* human rights,” while BASF comment, “We strive to contribute to the *protection* and wider recognition of human rights in our spheres of influence” (BASF Group’s Position on Human Rights, February 2011, page 1).

At the micro level of public corporate narrative, signs that have been fixed in the GPs take on different *textures* in the micro-discourse of corporate disclosure. Respecting rights takes on a number of different significations. In some narratives it involves recognizing, upholding, promoting, advancing and understanding while in other instances it also involves protecting them. The GPs provide the broader inter-textuality against which this network of signification makes sense; however, as a meta-level translation mechanism, there is some circulatory, ambiguity and slippage here as the lexicon of state responsibility to protect, and corporate responsibility to respect, blur and become indistinguishable.

Yet despite the lexical muddle, and regardless of any normative theoretical analysis on whether or not they should be responsible for rights, the emerging discourse does seem to signify a sense of corporations operating as a mechanism for building human rights capacity within systems of global governance. The inference, however subtle, is that corporations have a role to play as mechanisms of global governance with a responsibility to promote, advance, and protect “the basis of all civilized social interaction”, to use Bayer’s words. This inference hints towards quite a fundamental shift in the order of discourse and the social relations it represents.

The GPs are part of a new regime of global governance that displaces traditional conceptions of state power as the exclusive form of public power. They represent a challenge to established conventions and codes that have structured meaningful discourse on human rights, the state and corporate responsibility (Fairclough 1992). On the one hand, the GPs open up new ways for corporations to talk about their responsibilities and for communities to talk about the legitimate

role of corporations in the realization of human rights and the proper scope of democracy in this process (Held 2001; Beitz, 1994; Pogge, 1994; della Porta 2013). On the other hand, however, the possibilities of these new discourses are delimited by the powerful grammar of existing conversations.

In the following section we explore further the idea of corporations as mechanisms of global governance and through further discourse analysis consider further inferences relating to this process.

### *The Grammar of Respect.*

Moving from the lexicon of corporate responsibility for rights we further explore the meaning of respect by studying the grammar of the sentences used by the corporations in our sample. We use the term grammar in the loose sense of how the words combine to form sentences, however, drawing on Mashaw (2007) we also use the term to refer to a grammar of accountability that conveys the sense of who is responsible for what. We agree with Mashaw (2007) that the answer to these questions are associated with different institutional designs and forms of governance. Mashaw (2007: 11) contends that, “once we get the analytics or grammar of accountability reasonably straight and understand the purposes of different forms of accountability, we can then see more clearly what many accountability disputes entail.”

We find evidence of four grammars of respect in our sample:

- a. The grammar of state compliance
- b. The grammar of supra-state standards
- c. The grammar of enlightened engagement
- d. The grammar of realization

Each grammar has associated with it a different idea of what respect for human rights means, and consequently implies a different kind of global governance function for corporations.

In relation to the grammar of compliance, respecting human rights means respecting the sovereignty of governments. Within this grammar, the emphasis is on the states primary responsibility for rights. For example, in the following quote, Dow (2012) appear to accept some responsibility but limit this duty to a compliance function. They comment,

Dow's Values and Code of Business Conduct are influenced by and reflect the fundamental principles described in the United Nations Universal Declaration of Human Rights. *We respect the sovereignty of governments around the world and the responsibility of governments to protect the human rights of its citizens. Dow also has a significant role to play by ensuring compliance to local laws, regulations and customs.* [our emphasis]

*The Dow Chemical Company, Human Rights Web Page, 2012.*

GSK (Our Behaviour webpage, 2012) similarly comment that they “believe governments have a responsibility to define and enforce *a legal framework for human rights in accordance with international laws.*” According to the grammar of compliance, the role of the corporation is principally to ensure compliance to local laws. The corporation in this context serves a regulatory function that supports the state’s operations (Hoover 2012). Abbott articulates this compliance function in terms of *supporting* government. They say:

Abbott believes in the dignity of every human being and respects individual rights as set forth in the Universal Declaration of Human Rights. These principles are reflected in our company’s mission and core values. While governments have the primary responsibility to respect, protect, promote and fulfil the human rights of their citizens, Abbott recognizes that companies play a supporting role in promoting human rights within their spheres of influence.

*Abbott Global Citizenship Web Page, 2012.*

However, some disclosures seem to articulate a more active responsibility beyond ensuring compliance with national laws, through a grammar of Supra-State Standards. The language here is of a responsibility to something beyond state law and an international consensus that trumps local legislation. Some companies explicitly express a commitment to standards that extend beyond local laws. Rio Tinto, for example, comment,

The way we work, our global code of business conduct, supported by our Human Rights policy and guidance note provides the framework for our approach in this area. In implementing our policies, we are subject to the local laws of the many countries in which we operate. We build on compliance with local laws and where our policy and *procedures are more stringent, we operate to these standards.* [our emphasis]

*Rio Tinto Sustainable Development, Human Rights Web Page, 2012.*

What is interesting here is that the corporation becomes a mechanism for the enforcement of a set of global criteria as to the substantive conditions of “civilised society” that sits above nation states and their legal systems. Of course while these commitments may be voluntary they gain legal force if they become part of contractual obligations that corporations enter into, for example with suppliers (Ruggie & Sherman, 2015).



Johnson and Johnson (2012) provide an explicit list of the countries where they believe laws might be non-existent or insufficient in relation to their labour rights policies, for example. They say:

“Of the 60 countries in which Johnson & Johnson has operations, those countries considered at risk include:

- Angola
- China
- Colombia
- Egypt
- Georgia
- India
- Indonesia
- Israel
- Lebanon
- Malaysia
- Morocco
- Pakistan
- Russia
- Saudi Arabia
- Thailand
- United Arab Emirates
- Venezuela
- Vietnam
- Zimbabwe

*Johnson & Johnson Human Rights Compliance & Auditing webpage, 2012.*

The implication is that corporations can and should seek to mitigate against any form of state governance that is inconsistent with the states obligation to respect human rights (Backer 2011)<sup>xxiii</sup>. Merck seem to recognise the potential conflict in this practice when they say that they will apply *higher standards*, but only where this does not contravene national laws.

We adhere to local laws. When local protection is insufficient or non-existent, we observe even more demanding standards consistent with our human rights policy *to the extent that these standards do not violate local laws and regulations*. [our emphasis]

*Merck Human Rights webpage, 2012.*

The implication is that in India, Pakistan and Russia, for example, corporations, rather than the State, may in some instances be the source of the conditions of life that we have traditionally associated with the legitimacy of state political regimes. This is a responsibility that extends far beyond the political economy of the corporation as it has been traditionally construed. The radical implication is that the corporation helps to establish the political legitimacy and sovereignty of the nation state.

While the grammar of supra-state compliance infers a process of applying the super-norms of human rights standards in a way that does not overtly jar against national legislation, the grammar of enlightened engagement indicates an overt involvement in the process of government. BHP talk about their responsibility for human rights in terms of moving beyond adherence to national laws to engagement with government on human rights issues. They comment:

*While recognising the national sovereignty of host governments, we have a responsibility to promote human rights by contributing to public debate, supporting international agreements and commitments, and identifying opportunities to constructively engage government on human rights issues relevant to our business in the host country. [our emphasis]*

*BHP Billiton Sustainability Report 2007, Page 248.*

Xstrata (2011) similarly articulate their responsibilities in terms of engaging with government. They say,

*We engage with government, public security providers and communities to improve security in higher risk regions and to raise awareness of the UN Voluntary Principles on Security and Human Rights and human rights training. [our emphasis]*

*Xstrata Sustainability Report 2011, Page 20.*

Novartis use the language of an enlightened presence to talk about how they see their responsibilities in relation to sovereign states. They say,

*“Respect for human rights is an essential ingredient of good management. As a responsible corporate citizen, we aim to exert an *enlightened presence* wherever we operate.”*

This again raises questions about the jurisdiction of the corporation in these new, emerging global regulatory functions. Their role is construed as regulating not only the conditions of life for individuals within sovereign states, but the deliberative processes of government themselves (della Porta 2013).

Xstrata and BHP say that they have a responsibility to promote human rights beyond the nation state and that they do this through public debate and constructively engaging government, while Novartis talk about their responsibility to be an enlightened presence. Yet this engagement raises questions about how we are to construe this activity, and on what basis accountability relating to their engagement with government on human rights issues should be discharged? In terms of process the inference is that the corporation, by virtue of its human rights responsibilities, becomes a representative of the interests of the global public<sup>xxiv</sup>! This kind of logic inverts the traditional relationship between business and the state (Cohen 2008) and nullifies an assumption that has provided the basis for almost everything taught in business schools.

Finally, we identified evidence of an emerging grammar of realization. Here the nomenclature of respect is recontextualized into a grammar of realization that is tied to a core function of the business (Nonaka, Toyama and Nagata 2000). This form of recontextualization seems particularly the case in the pharmaceutical industry and in relation to the right to health<sup>xxv</sup>. There seemed to be significantly more discussion of the right to health within the pharmaceutical companies in our sample in the second tranche of data collection. Merck, for example, comment,

Although government has the primary responsibility for managing a health system that ensures the health of their citizens, pharmaceutical companies have a substantial role to play in realizing this right.

*Merck Corporate Social Responsibility Report 2011, Page 227.*

Merck explain their responsibilities as follows:

... The role of the pharmaceutical industry in respecting and promoting health as a human right is complex. *We believe that our most basic role is our core activity of discovering, developing and delivering medicines and vaccines to address unmet medical needs...* Supporting the Right to Health beyond these efforts, we also have the ability - and we believe the responsibility - to support the right to health and to effect positive change. *We do this by promoting timely product registration; by helping to improve access to new medicines and vaccines; and through partnerships and public policy advocacy that seek to strengthen healthcare capacity and address deep rooted and multifaceted barriers to access in ways that are aligned with our business mission and core capabilities.*

*Merck Corporate Social Responsibility Report 2011, Page 227.*

Each of the grammars above is linked to a different fabula (Fairclough, 2003), a different corporate narrative that provides meaning to corporate activity both within and outside the corporation. Merck connect their role in realizing a right to health to their core business activity, but this function is also inextricably linked to state public policy in both developing and developed countries. What is interesting about this case is that Merck engages with rights at the level of its core business activity, which it links to liberalized markets<sup>xxvi</sup>. It is not that rights are to some extent peripheral to what the company does. Rather, the company construes its primary activity in terms of the realization of a right to health, a claim that seems difficult to reconcile with the profit orientation of the company. It seems to us, in this specific instance, that there is at least some sense of the discourse of rights being employed to provide the *absurd* pursuit of profit with moral value (Boltanski & Chiapello 2005). It's perhaps one thing to say that policy can be more effectively delivered via new public sector management; however, it seems quite another to say that human rights are best realised through corporations and competitive markets that are

driven by a profit motive. Yet this seems to be the inference and is an example of how the meaning of two ordered discourses are combined together.

The range of emergent propositions reflects the tensions and ambiguity in the polycentric model of governance it advocates; the different institutional contexts of the individual companies in our sample and the meaning structures of two different meta discourses – rights and free markets. While there is some reluctance to explicitly talk about potential conflicts between a commitment to the UNDHR and national legislation, the internal relations of the text open up a number of significant challenges in relation to conceptualizing the corporation as an autonomous source of power beyond the state. The language of promoting, realising and upholding rights challenges the traditional construction of human rights as the primary responsibility of nation states and positions the corporation in the role of moral arbitrator within the communities within which they operate (Muchlinski 2001).

If the mere claim that corporations can have a duty to observe rights pushes human rights law beyond its limits, then presumably corporations claims to promote human rights are even less intelligible within the sphere of traditional jurisprudence, as it is within the sphere of accounting theory (Muchlinski, 2001). This is primarily because, regardless of the principled pragmatism of the GPs, the claim to be responsible for both the promotion and protection of human rights ontologically constructs corporate moral agency in a manner that has been the exclusive preserve of the state (Muchlinski, 2001; 2012; Schweiker, 1993; Shearer, 2002; Hoover, 2012).

#### *The Scope of Respect: Constructing the rights for which corporations are responsible*

Having discussed the different meanings of respect emergent within the corporate discourse on rights, we now explore the scope of rights for which corporations are to be held responsible (Muchlinski, 2001). As Mashaw (2007) points out, a key aspect in understanding the “grammar’s of governance” within accountability frameworks is the issue of what individuals will be accountable for.

The GPs do not limit the scope of rights for which corporations are to be responsible. The commentary in GP 12 states, “Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights.” The GPs stipulate that responsibility should be related to business activity.

However, as with the requirement to respect, the relationship between business activity and rights is evolving. Systems of classification work within the texts to establish relationships of equivalence and difference between specific rights. These classifications are part of the social process of classification determining the scope of corporate responsibility. We identified three different scopes in this regard. We label them the Claimant Classification; the Classes Classification; and, the Constructionist Classification

We found some evidence of a classification systems that worked to limit the scope of rights that business can affect. AstraZeneca and Xstrata provide examples:

We are fully supportive of the principles set out in the UN Declaration of Human Rights, and our Code of Conduct and supporting policies outline the high standards of employment practice with which everyone in AstraZeneca is expected to comply, both in spirit and letter. *These include respecting diversity and, as a minimum, complying with national legal requirements regarding wages and working hours.* [our emphasis]

*AstraZeneca Annual report and form 20-F 2007, Page 36.*

Xstrata supports the UN Universal Declaration of Human Rights and the International Labour Organisation Conventions. We respect the legislation in each country in which we operate. Xstrata is a signatory to the UN Global Compact and we have aligned our strategy and operational performance with ten universally accepted principles in the areas of human rights, labour, the environment and anti-corruption. ... *The primary human rights in our business relate to the rights of our employees and contractors to work for equal pay, associate freely, to a safe and healthy workplace, to non-discrimination and to legal rights.* [our emphasis]

*Xstrata plc Sustainability Report 2007, Page 27.*

These claimant scopes appear to focus on responsibility in relation to the rights of categories of claimants specifically associated with the corporation: in this instance, the rights of employees and contractors.

Yet, while on the one hand, limiting human rights to labour rights obviously restricts the scope of corporate accountability, there is some evidence of a broader scope of rights. Novartis for example, construct their human rights obligations in terms of the civil, political and economic rights categories normally employed in relation to the universal declaration:

Respect for human rights is an essential ingredient of good management. As a responsible corporate citizen, we aim to exert an enlightened presence wherever we operate. We do everything in our power to ensure that we are not complicit in any violations of human rights - *whether these are civil, political, economic, social or cultural in nature.* [our emphasis]

*Novartis GRI Report 2008, Page 53.*

Classes of Economic, Social and Cultural rights encompass the right to education, the right to housing, the right to health and the right to an adequate standard of living. Civil and political, on the other hand, are related to ensuring the participation in the civil and political life of the state and deal with the protection of individual freedoms from infringement by government and private actors. This scope construes responsibility more in terms of categories of rights.

There is evidence of an emergent discussion of a right to environment which we consider to be a constructionist classification. Examples are provided by BHP and Pemex:

When engaging with our local host communities, we have a responsibility to protect those human rights directly affected by our activities. These include *the right to a clean environment by minimising the impact of environmental pollution from our operations and the promotion of other basic human rights, such as access to clean water and basic health services*. [our emphasis]

*BHP Billiton Sustainability Report 2007, Page 248.*

In its relations with indigenous communities and stakeholders, have the *environmental human rights* that are so often violated or are impacted as a result of the company's activities been taken into account?

In general terms and as a base, respect for *human environmental rights*, which are understood as a group of natural benefits to which an entire group or community can legitimately aspire, such as clean air, sound environment, sufficient quality water, soils in a good state of conservation, among others, is centered on compliance with the terms and conditions established for each project as a result of the Environmental Impact Manifest (MIA). Particularly, there is special care in the development of oil projects that are related, given their geographic proximity, to protected natural areas or more ecologically sensitive areas. [our emphasis]

*Pemex Social Responsibility Report 2010, Page 20.*

There is some considerable debate within the human rights literature as to whether and how to construe a right to environment. The important issue here is that corporate responsibility for human rights is extending beyond the rights traditionally contained within the International Bill of Human Rights, which the GPs present as the basis for corporate responsibility. Although not explicitly articulated in the International Bill of Human Rights, the right to environment is increasingly viewed as a prerequisite to the fulfilment of the rights it contains.

Within the GPs, the scope of the rights for which corporations will be held accountable is explicitly linked to business activity. We observe that the grammar of responsibility for rights cannot be dissociated from the scope of the rights for which corporations are to be held accountable. Different ways of classifying rights is apparent from the corporate discourse. How

corporations impact on claimants' rights or categories of rights, or how they become involved in both sustaining old categories and creating new categories of rights by rendering an account is significant for the way corporate responsibility for rights is both construed and practiced.

However, the scope of rights for which corporations are responsible presumably also includes the property rights of shareholders. BHP Billiton (Annual Report 2007 pg. 59), for example, comment on "The rights attached to the shares of BHP Billiton Limited, as regards the participation in the profits available for distribution." Yet there is little narrative on the competing claims associated with the (property) rights of shareholders. The issue here is that as the scope of rights for which the corporation is held accountable expands, so the corporation, and specifically the practices of due diligence and remediation, become mechanisms for negotiating competing rights claims.

### *The Operationalization of Corporate Responsibility for Rights*

Having studied both the meaning and scope of respect for rights, we now briefly consider the operationalisation (Fairclough 2003) of respect for human. The GPs outline the human rights responsibilities of both states and corporations. However, introducing the corporation as a new centre of responsibility for human rights requires new ways of conceptualizing and practicing these responsibilities beyond the legislative and political mechanisms that we normally associate with legitimate government (Backer, 2011; della Porta, 2013). Within the context of the traditional human rights discourse, responsibility for rights (the substantive conditions of life within legitimate political regimes) are realised through democratic mechanisms. Taken together, it is both the conditions and the democratic procedures through which they are realised that legitimise political systems (della Porta 2013). While the language and mechanisms of state responsibility are well developed in policy formation and law for example, introducing a second primary governance regime into the promotion of rights requires not only that a new language be found to articulate these concerns, but also a new set of accountability mechanisms to practise them (Backer 2011; della Porta 2013; Archibugi 2003). This creates a new set of possibilities of accountability within organisations and at least the prospect of new organizational realities (Roberts 1991) as the meaning of respect is reflected in, and affected by, its operationalization.

GP 15 outlines three ways in which corporate responsibility for human rights should be implemented in practice: the articulation of a policy commitment to human rights, the

implementation of a human rights due diligence framework and the implementation of non-judicial remediation processes. We are interested in both mechanisms as new ways of practising responsibility for rights. The inference from the GPs is that these are practices of accountability and justice.

### *Human Rights Due Diligence*

The GPs require corporations to assess the actual and potential human rights impacts associated with their own activities or linked to their business relationships<sup>xxvii</sup>. This process is intended to be an open, transparent and representative mechanism of accountability rather than an assessment of the human rights risk to corporate profitability (Backer, 2011). According to the GPs, the due diligence system should be associated with five functions: assessing, consulting, integrating, tracking and communicating. Backer (2011b: 77) presents this process as “*a basis for independent monitoring from corporate outsiders.*”<sup>xxviii</sup> The due diligence system is construed as a key accountability mechanism for identifying human rights impacts and assessing plans for addressing these impacts. They represent fora for guiding executive action and provide institutional accountability in relation to those actions. As such, they bear the traces of the aspirations for political action that we normally associate with nation states (Held & Koenig-Archibugi, 2005). They represent opportunities for citizenship (Held 2005). According to the GPs this process will involve both “meaningful consultation with potentially affected groups and other relevant stakeholders” (GP 18, Ruggie, 2011) and the development of new “appropriate qualitative and quantitative indicators,” designed to verify whether and how adverse human rights impacts are being addressed (GP 20a, Ruggie, 2011: 19)<sup>xxix</sup>. Both these characteristics then feed into a system of non-judicial remediation.

The GPs explicitly suggest that human rights due diligence should be integrated into business through, for example, linking rights to performance incentives and by assigning responsibility for rights to the appropriate level of management. The content of the public discourse of the corporations in our sample reflects the GPs in this regard. We find evidence that human rights due diligence is being integrated into internal control mechanisms in three ways: assessment mechanisms, organisational performance and, finally, corporate governance. AksoNobel (2008) for example reference to a self- assessment tool which ostensibly provides the basis for precautionary action. There is also some evidence from BHP, that human rights due diligence is also being related to organizational performance evaluation via the company’s balanced scorecard



while Johnson and Johnson (2012) comment that their process of human rights due diligence is part of the company's internal audit procedures and is the responsibility of the Board of Directors. The only hint of human rights due diligence operating as an external accountability mechanism comes in comments made by BHP in their 2011 Sustainability Report. They say:

“Our human rights due diligence process requires our operations to identify and document key potential human rights risks by completing a human rights impact assessment (HRIA). *HRIAs must be verified through an engagement process with stakeholders, validated by a qualified specialist every three years and internally.* [our emphasis]

*(BHP Sustainability Report 2011, Page 21.)*

There is therefore some evidence that the practices outlined in the GPs are beginning to be reflected in the corporate discourse on human rights responsibilities. These practices, as they are disclosed, fall considerably short of the kind of external accountability function that is envisaged within the GPs (Backer, 2011). Yet they do represent evidence of the translation of regulatory mechanisms outlined in the GPs, into the context of the corporation. Viewing the corporation, as opposed to the state, as a vehicle for delivering human rights means translating responsibility for rights to boards as opposed to elected representatives and connecting the realization of rights to performance evaluation. This creates significant questions about the nature and representativeness of boards (McPhail, 2010). However, it also creates questions about what happens to rights once we begin to think about their realization in terms of financial remuneration. It changes both the administration of rights as well as the nature of rights.

### *Access to Remedy*

One of the most challenging aspects of the Guiding Principles is the requirement that corporate governance systems incorporate provisions for access to remedy.

The GPs call on states to realize their responsibility for human rights through judicial, administrative and other means: for example, the courts, labour tribunals, National Human Rights Institutions, National Contact Points under the Guidelines for Multinational Enterprises of the OECD (Organization for Economic Cooperation and Development), along with ombudspersons and complaint offices. However, the GPs also call on companies and industry groups<sup>xxx</sup> to implement, “operational-level grievance mechanisms for those potentially impacted by the business enterprise's activities” (Ruggie, 2011:22). The GPs envisage that these grievance mechanisms would endeavour to make good any violations of human rights by corporations. The

import of this requirement should not be overlooked. The GPs contend that corporations should put in place mechanisms that will dispense justice to those whose rights have been violated! (Macdonald, 2009). The GPs contend that non-judicial access to remedy should be legitimate (being accountable for the fair conduct of grievance processes); accessible, with no barriers to access; predictable with a clear and known procedure; equitable; transparent and rights compatible. Again, it seems clear that the language of state-based democratic procedures are being brought into the corporate sphere.

We found some reference to access to remedy however, this discussion seems to refer almost exclusively to state based access to remedy. Bayer, for example, comment on a change to their grievance procedures. They say,

In the United States an ombudsman previously acted as a neutral point of contact for employees in cases of possible violations of our Human Rights Position. These duties have been assumed by the regular compliance organizations since the end of last year.

*Bayer Sustainability Development Report 2011, Page 47.*

Pemex (2010) provide some more detailed disclosure on the number of cases reported to the National Human Rights Commission. No mention is made of any procedures internal to the company. They say,

In 2010, some 39 complaints to the National Human Rights Commission (eight complaints in 2009 and 31 received in 2010) were attended. 23 complaints were concluded of which one led to a recommendation, with 15 still being processed for 2011. Seven complaints were attended by the Consejo Nacional para Prevenir la Discriminación (National Antidiscrimination Council) (three in 2009 and four in 2010), of which three were concluded and four are being processed for 2011. In summary, of a total of 46 cases, 26 files were closed in 2010 (one recommendation), with 19 still being processed for early 2011.

*Pemex (2010) Social Responsibility Report, Page 99.*

In contrast BHP Billiton (2011) simply state:

“BHP Billiton believes we have not violated the rights outlined in the United Nations Universal Declaration of Human Rights during FY2011.”

*BHP Billiton (2011) Sustainability Report, Page 21.*

Of all the elements of the guiding principles, the issue of access to remedy was discussed the least; this is despite the fact or perhaps because of the fact that it represents the most important aspect of the GPs, certainly for those who's rights have been violated. As Backer (2011: 186) comments, “the remedial obligations of states and corporations present the most potentially dynamic element of the GP framework.” Significantly, the GPs present corporate, operational level grievance mechanisms as supporting the monitoring function of the human rights due

diligence procedures. GP 30 comments, “These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts.” Given the concern over states’ abilities to meet their human rights responsibilities that underpins the focus on business and human rights, the GPs access to remedy principle infers the possibility that non-judicial corporate based grievance mechanisms may sometimes represent the only redress for victims of corporate human rights violations where state based mechanisms are unavailable.

Yet it is difficult to envisage precisely the kinds of claims that could be brought to these grievance procedures, how they could be adjudicated, or the kinds of accountability mechanisms that would need to be in place in order to report both their procedural and substantive provisions. How could an individual who feels that their rights to health have been violated by Merck pursue remediation through the companies internal grievance mechanisms? Or how could a case be made against BHP by individuals and communities who may be adversely impacted by a breach of their environmental rights?

#### **4. Conclusion**

The GPs signify a radical shift both in human rights ideology and global governance (Backer, 2011; Ratner, 2001; Muchlinski, 2001; 2012). They represent an attempt to pursue the realization of human rights in the face of the changing governance networks that underpin globalization. The GPs as a text are part of a shift in the contemporary *order of discourse* that is (re)shaping social relations.

In contrast to emerging studies within the literature, this article has focused less on critiquing the normative claims in the GPs and instead focuses on the forms that the meaning of respect is beginning to take. This article has drawn on CDA (Fairclough, 2006) to conceptualise the GPs as a discursive event and explore the *emergence* and *operationalization* of business and human rights discourse in practice. We do this in order to identify linguistic traces of a reconfiguration of social, economic and political relations in the translation of the GPs into corporate accountability discourse. We contend that the way this discourse is entering corporate discourse reflects a significant reconfiguration of political power.

The GPs represent an attempt to provide the bases for making intelligible statements about business and human rights (Chouliaraki & Fairclough, 2010). The principles and practices

contained in the GPs radically challenge taken for granted views of the relationship between government and business while the practices they advocate challenge established ideas of how corporate responsibility should be practised. These challenges are reflected in the internal relationships within the corpus of text we analysed.

We find “significant absences,” (Fairclough, 2006) in the sense that there is no information on the relationships between governments and corporations, for example, in relation to stabilization clauses. We also identify a demarcation between *human rights* on the one hand and the property rights on the other. We find a logic of appearance, in the sense that both sets of rights appear in the same text, but little in the way of a *logic of understanding* the tensions between the two competing claims (Fairclough, 2003). Yet despite these absences and appearances, the semantic and grammatical relationships within the text do seem to reflect traces of a shift in political and societal relationships. The language of promoting, realizing and upholding rights challenges the traditional construction of human rights as the primary responsibility of nation states and positions the corporation in the role of moral arbitrator within the communities within which they operate (Muchlinski, 2001). The various scopes and grammars require further research to understand the sources of these differences; however, the internal structure of the text hints at a role for corporations as mechanisms of global governance with a responsibility for regulating state behaviour.

The claim to be responsible for both the promotion and protection of human rights ontologically constructs the corporation in a manner that has been the exclusive preserve of the state (Muchlinski 2001; 2012; della Porta 2013). The public power of the state has been legitimised, at least ostensibly, by their democratic accountability (Backer 2011b). In Fairclough’s (2003) terms the text constitutes the social identities of the participants. At least according to traditional views of human rights, the textual relationships within the corpus of corporate public accounts is normally associated with a much more democratic style of accountability than we currently find practised by corporations.

We began this article by asking, what does “respect mean?” What is the scope and meaning of human rights? And, finally, how is respect being practised? There is a significant shift in discourse taking place at the UN as corporations are being construed as having a responsibility for respecting and promoting rights that exists independently of states’ obligations. The policy recommendations contained in the GPs are innovative but emergent. The discourse of business

and human rights is being ordered and as Chouliaraki and Fairclough (2010: 1215) comment, more work is required on the dialectical way in which this discourse is developing. More theoretical work is required on how the business and human rights discourse challenges our established ideas on the purpose of corporations in society and how the realization of rights is being tied to corporate activity. Considerably more work is required on how non-judicial access to remedy might evolve and whether and how human rights due diligence could fulfil an independent monitoring function for corporate outsiders if the discourse on business and human rights is to “figure in social movements and struggles for fairer, more democratic, ecologically sustainable forms of social life” (Chouliaraki & Fairclough, 2010: 1215).

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## Figures & Tables.

Figure 1. Alvesson and Karreman's discourse matrix

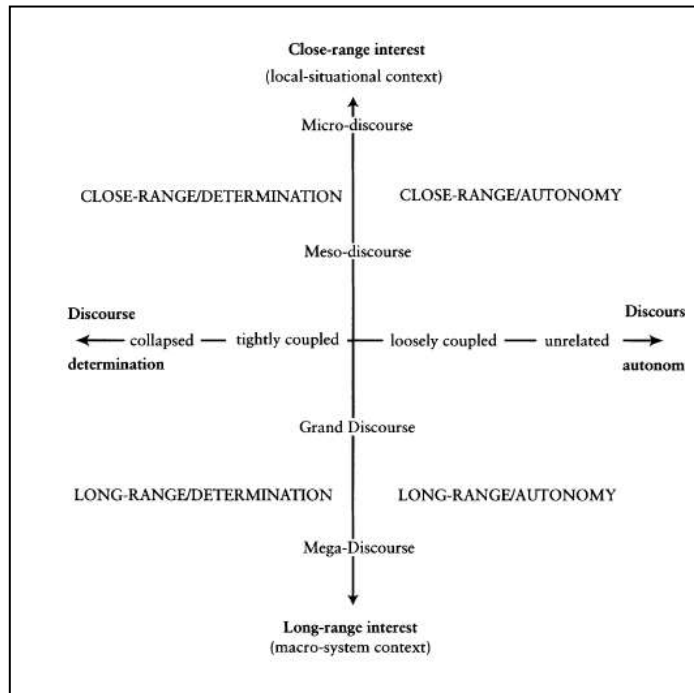


Table 1 Sample Fortune Global 500

companies as at 2007 .

	Chemical		Mining		Pharmaceutical	
1	BASF	Germany	Pemex	Mexico	Pfizer	USA
2	Dow Chemical	USA	BHP Billiton	Australia	GlaxoSmithKline	UK
3	Bayer	Germany	CVRD (Vale)	Brazil	Roche Group	Switzerland
4	Sabic	Saudi Arabia	Rio Tinto Group	UK	Sanofi-Aventis	France
5	Du Pont	USA	Anglo American	UK	Novartis	Switzerland
6	Mitsubishi Chemical	Japan	Xstrata	Switzerland	AstraZeneca	UK
7	Hanwha	Korea	Oil & Natural Gas	India	Abbott Laboratories	USA
8	Evonik	Germany	Surgutneftegas	Russia	Merck	USA
9	AkzoNobel	Netherlands	Encana	Canada	Wyeth	USA
10	Linde Group	Germany	OXY	USA	Johnson & Johnson	USA

<sup>i</sup> The GPs represent an attempt to move beyond the lack of conceptual clarity and corporate accountability of the Global Compact towards more binding corporate responsibility for human rights (Nolan, 2010; Taylor, 2011; Ruggie, 2011). Nolan (2010: 16), for example, comments, “the principles cited in the Global Compact do not constitute a sufficient basis for designing enforceable standards and are beneficial more from the point of view of acting as yet another indicator in the global arena of the general relevance of international human rights norms to business.... Along with the lack of specificity in defining the relevant rights, is a vagueness concerning the scope of the initiative, in particular the degree of responsibility a company assumes in embracing, supporting and enacting these rights.”

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<sup>ii</sup> There are broadly five categories of human rights: civil, political, economic, social and cultural. The five different categories are codified in two legally binding covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, social and Cultural Rights (ICESCR).

<sup>iii</sup> Fairclough (2005, p.932) sets out a number of “broad sets” of research questions for CDA to address including emergence, hegemony, recontextualisation and operationalisation.

<sup>iv</sup> We recognize that others have provided alternative ways of exploring discourse. Ferguson (2007) for example draws on Thompson’s (1990) “tripartite approach”, which outlines three “object domains” of the production and transmission of discourse; the construction of the media message and the reception and appropriation of media messages (Thompson, 1990). We have some questions about the linearity and independence of each block. We also think the medium can’t be separated from the message. We think it is difficult to close down “the message.” Cooper, Coulson & Taylor (2011) also look at the way broader discourses of human rights are translated into everyday practice. Both Ferguson (2007) and Cooper, Coulson & Taylor (2011) draw on Bourdieu.

<sup>v</sup> Of course, this is not to say that human rights have remained fixed. As Gaete (1993) comments, “The discourse of rights is extraordinarily elastic as it went through all kinds of unexpected rhetorical mutations” (Gaete 1993: VIII). Yet we contend that the discourse of human rights has, nevertheless an element of durability.

<sup>vi</sup> Many of CSR (Corporate Social Responsibility) studies conclude that corporate public narrative is driven by a desire to comply with community expectations and concerns about legitimacy (Deegan, 2002; Deegan, Rankin, & Voght, 2000), and managing stakeholders (Deegan & Blomquist, 2006). Indeed Larrinaga-Gonzalez et al. (2001) present the corporation as a politically conscious language user and social accounting as simply a public relations exercise (see also Husillos, Larrinaga-Gonzalez & Spence, 2009). Gray et al. (1997) contend that conventional social reporting cannot deliver *real* accountability. In response the tendency has been to focus on alternative forms of accounting (for example, shadow and silent accounting), or to shift from studying disclosure (as text) to the organizational contexts within which it is produced (Adams, 2004; Adams & Larrinaga-Gonzalez, 2007).

<sup>vii</sup> Alvesson and Kareeman (2000), however, provide a useful way of positioning these studies in terms of their methodological assumptions. It seems that quite a lot of the research focuses on long-range determination.

<sup>viii</sup> We read Fairclough’s critical discourse analysis as advocating keeping the broader social context in tension with the reading of a specific context.

<sup>ix</sup> Fairclough (1992) calls on academia to get involved in the struggle.

<sup>x</sup> Fairclough (2003, pp.2-3) explains, “My own approach to discourse analysis has been to try to transcend the division between work inspired by social theory which tends to analyse text, and work which focuses upon the language of texts but tends not to engage with social theoretical issues. This is not, or should not be an ‘either/or’. On the one hand any analysis of texts which aims to be significant in social scientific terms has to connect with theoretical questions about discourse (e.g. the socially constitutive effects of discourse). On the other hand no real understanding of the social effects of discourse is possible without looking closely at what happens when people talk or write.”

<sup>xi</sup> Note, we say nothing here about whether and how both notions relate to a ‘real’ external world. This is an entirely different matter which would require further elaboration of a nature inappropriate for the current purposes of the article.

<sup>xii</sup> We recognise that the text we analyze constitutes only a part of discourse (Fairclough 2005).

<sup>xiii</sup> Chouliraki and Fairclough (2010) contend that CDA is not a mechanical technique and call for attempts to proceduralize CDA into a method to be resisted. Gallhofer, Haslam & Roper (2001) similarly contend that there is no set formula for undertaking CDA.

<sup>xiv</sup> We were aware for example of the work of the UN Special Rapporteur on the right to the highest attainable standard of health, and the Human Rights Guidelines for Pharmaceutical Companies in Relation to Access to Medicines.

<sup>xv</sup> The following companies did not reference the GRI: Dupont, Hanwha, Evonik, Oil & Natural Gas, Surgutneftegas, Sanofi-Aventis, AstraZeneca, Abbott Laboratories, Wyeth.

<sup>xvi</sup> Novartis is, however, particularly noteworthy. The company was one of the first in the pharmaceutical industry to sign up to the Global Compact and they have worked closely with the UN Special

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Representative on Business and Human Rights, as well as the Special Rapporteur on the Right to Health. The company piloted a human rights compliance project in 2007.

<sup>xvii</sup> Mashaw (2007) contends that accountability can be thought of in terms of six broad elements: who, to whom, for what, through what process, by what standard; and with what effect. We use these different elements to help proceduralise the close textual reading that Fairclough commends.

<sup>xviii</sup> Note we make no comment about the framework itself, we simply point out that its existence should be a factor in understanding how both human rights and sustainability are or are not likely to converge.

<sup>xix</sup> Backer (2011) contends that locating corporate responsibility for rights dilutes the subordination of non-state actors in all cases to the state based law-norm system. He argues that that the international human rights treaties should be incorporated into law and corporations should be obliged to obey the law.

<sup>xx</sup> The idea of citizenship is normally associated with rights.

<sup>xxi</sup> By lexical we mean the vocabulary used by corporations to refer to their human rights responsibilities.

<sup>xxii</sup> By syntax we refer to the structure of the sentences used by corporations when they talk about human rights responsibilities.

<sup>xxiii</sup> However, there is a danger that the application of corporate human rights policies becomes a form of moral imperialism that opens up the potential for imposing neo-colonial power relationships between states (Backer 2011).

<sup>xxiv</sup> We see this function as being related to procedural forms of democracy (della Porta 2013).

<sup>xxv</sup> Article 12 of the ICESCR (International Convention on Economic Social & Cultural Rights) talks about the enjoyment of the highest attainable standard of physical and mental health.

<sup>xxvi</sup> There is clearly something going on at Novartis that is locally specific to the corporation. However, the fact that they are still articulating their social responsibility and business case in terms of rights seems to hint towards the language of human rights operating at the level of Discourse.

<sup>xxvii</sup> The GPs replace the “sphere of influence” notion of responsibility with responsibility based on activity and business relationships.

<sup>xxviii</sup> The GPs indicate that human rights may be brought within the ambit of broader enterprise risk-management systems, provided that, “it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.”

<sup>xxix</sup> Ruggie comments in the commentary to GP 17,

“Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.”

<sup>xxx</sup> The GPs comment that corporate responsibilities to protect human rights might be implemented at the level of industry or multi-stakeholder groups. “They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes.”